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SEC

SERVICE DATE - OCTOBER 15, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34085

KEOKUK JUNCTION RAILWAY CO.
–ACQUISITION AND OPERATION EXEMPTION–
WEST END OF TOLEDO, PEORIA AND WESTERN RAILWAY CORPORATION

Decided: October 12, 2001

On August 15, 2001, Keokuk Junction Railway Co. (KJRY), a Class III common carrier by rail, filed a notice of exemption under 49 CFR 1150.41 to acquire and operate approximately 98 miles of rail line owned by the Toledo, Peoria and Western Railway Corporation (TP&W). The involved line extends between milepost 108.0 near East Peoria, IL, and milepost 206.0L near Lomax, IL, including trackage rights over Union Pacific Railroad Company between Hollis (milepost 119.28) and Iowa Junction (milepost 113.9), and the Peoria and Pekin Union Railway Company between Iowa Junction (milepost 113.9) and milepost 109.49. Notice of the exemption was served and published in the Federal Register (66 FR 45892) on August 30, 2001. The exemption became effective on August 22, 2001, 7 days after it was filed.¹

On September 13, 2001, KJRY filed a petition stating that it has reconsidered going forward with the transaction and voluntarily requesting revocation of its notice of exemption in this proceeding, “without prejudice.” On September 24, 2001, TP&W filed a pleading entitled a “Supplement to Petition to Reject or Revoke Verified Notice of Exemption,” but which in effect replies to KJRY’s petition seeking voluntary dismissal. TP&W asks the Board to dismiss the proceeding “with prejudice.”

TP&W noted that, on September 19, 2001, KJRY filed a motion to voluntarily dismiss a related court action in the Circuit Court for the Ninth Judicial Circuit of Fulton County, Illinois, with prejudice. TP&W states that this proceeding should be dismissed on the same basis. KJRY replied to TP&W’s Supplemental Petition on September 28, 2001.

¹ On August 20, 2001, TP&W filed a petition to stay the effectiveness of the exemption pending consideration of its simultaneously filed petition to reject or revoke the notice. The same day, SF&L Railway, Inc. (SF&L) also filed a petition to reject the notice. On August 21, 2001, KJRY also filed a joint response to those petitions. On August 27, 2001, Joseph C. Szabo, on behalf of the United Transportation Union-Illinois Legislative Board (UTU-IL), filed a petition to reject or revoke and to stay the exemption. In that petition, UTU-IL also sought discovery from KJRY. KJRY replied to that petition on August 30, 2001. The stay petitions were separately denied by decisions served on August 23 and September 12, 2001.

KJRY's petition to revoke its exemption will be granted and this proceeding will be dismissed. The effect of this order is to preclude KJRY from seeking to revive the notice it filed in this proceeding on August 15, 2001. But this action would not preclude KJRY from seeking to invoke this agency's jurisdiction by filing a new notice in a new proceeding. TP&W does not suggest that the Board has the authority to refuse to entertain petitions of any sort. KJRY's request will be granted and the exemption will be revoked.

It is ordered:

1. The request of KJRY to voluntarily revoke its exemption is granted.
2. The exemption is revoked and the proceeding is dismissed.
3. This decision is effective on its date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary